

## Message Text

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46

ORIGIN EB-07

INFO OCT-01 ARA-10 ISO-00 SSO-00 NSCE-00 INRE-00 USIE-00

PRS-01 PA-02 CAB-05 CIAE-00 COME-00 DODE-00 DOTE-00

INR-07 NSAE-00 FAA-00 L-03 H-02 SS-15 NSC-05 EUR-12

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DRAFTED BY EB/AN:AJRIMAS:DAP

APPROVED BY EB/OA:MHSTYLES

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O R 271633Z MAY 75

FM SECSTATE WASHDC

TO AMEMBASSY LIMA IMMEDIATE

INFO AMEMBASSY BOGOTA

AMCONSUL GUAYAQUIL

AMEMBASSY QUITO

AMEMBASSY CARACAS

AMEMBASSY LA PAZ

AMEMBASSY ASUNCION

AMEMBASSY SANTIAGO

AMEMBASSY BUENOS AIRES

UNCLAS STATE 122552

E.O. 11652: N/A

TAGS: EAIR, PE

SUBJECT: CIVAIR: NOTIFICATION AND ORDER DISAPPROVING

1. ON MAY 23 PRESIDENT LIFTED HIS STAY ON CAB ORDER DIS-  
APPROVING AEROPERU SCHEDULES. ORDER BECOMES EFFECTIVE  
MAY 27, TEXT FOLLOWS PARA 2 BELOW:

2. "AEROPERU (EMPRESA DE TRANSPORTES AERO DEL PERU) IS THE  
HOLDER OF A FOREIGN AIR CARRIER PERMIT (ISSUED PURSUANT  
TO ORDER 74-7-121), WHICH AUTHORIZES IT TO PERFORM  
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FOREIGN AIR TRANSPORTATION WITH RESPECT TO PERSONS, PROPER-  
TY, AND MAIL, OVER A ROUTE BETWEEN: (1) A POINT OR POINTS  
IN PERU; THE INTERMEDIATE POINTS GUAYAQUIL AND QUITO,  
ECUADOR; BOGOTA AND CALI, COLOMBIA, PANAMA CITY, PANAMA;

CARACAS, VENEZUELA; AND MIAMI FLORIDA; AND THE TERMINAL POINT MONTREAL, CANADA; AND (2) A POINT OR POINTS IN PERU; THE INTERMEDIATE POINTS GUAYAQUIL, ECUADOR; AND MEXICO CITY, MEXICO; AND THE TERMINAL POINT LOS ANGELES, CALIFORNIA; AND TO ENGAGE IN CHARTER TRIPS SUBJECT TO PART 212 OF THE BOARD'S ECONOMIC REGULATIONS. THIS PERMIT, ISSUED PURSUANT TO THE AIR TRANSPORT SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE

GOVERNMENT OF PERU, ENABLES AEROPERU TO OPERATE TO THE UNITED STATES WITH WHATEVER NUMBER OF FREQUENCIES AND COMBINATION OF AUTHORIZED POINTS IT DESIRES, UTILIZING WHATEVER TYPE AIRCRAFT IT ALONE CHOOSES.

"IN MAY 1974 THE U.S.-DESIGNATED CARRIER (BRANIFF AIRWAYS) APPLIED TO THE AERONAUTICAL AUTHORITIES OF PERU FOR AUTHORITY TO OPERATE TWO ADDITIONAL FREQUENCIES TO THAT COUNTRY. WHEN THE GOVERNMENT OF PERU INDICATED THAT IT WOULD NOT APPROVE BRANIFF'S APPLICATION, THE UNITED STATES GOVERNMENT NOTED ITS OBJECTIONS AND REQUESTED THE PERUVIAN AUTHORITIES TO RECONSIDER THEIR DECISION PENDING CONSULTATIONS. THE PERUVIAN AUTHORITIES DECLINED TO DO SO.

"ON OCTOBER 22, 1974 THE GOVERNMENT OF PERU ISSUED BRANIFF A NEW OPERATING PERMIT WITH AN EXPIRATION DATE OF FEBRUARY 28, 1975. THE PERMIT REDUCED THE NUMBER OF FLIGHTS PERMITTED THE U.S. CARRIER BETWEEN THE UNITED STATES AND PERU AND BEYOND AND REQUIRED THE CARRIER TO ADHERE TO A PRESCRIBED ITINERARY ON THOSE FLIGHTS WHICH WOULD CONTINUE TO OPERATE. FURTHER RESTRICTIONS WERE PLACED ON THE NUMBER OF FLIGHTS THAT THE CARRIER MIGHT OPERATE TO INDIVIDUAL POINTS ALONG THE ROUTE. BRANIFF'S SERVICES BETWEEN LIMA, LA PAZ AND ASUNCION; LIMA, LA PAZ AND BUENOS AIRES; LIMA, LA PAZ AND SANTIAGO AND BETWEEN LIMA, SAO PAULO AND RIO DE JANEIRO WERE AUTHORIZED TO CONTINUE ONLY PROVISIONALLY (FOR A PERIOD OF 45 DAYS), IT UNCLASSIFIED

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BEING ALLEGED THAT THEY WERE NOT CONTEMPLATED IN THE ROUTE ANNEX OF THE U.S.-PERU AIR TRANSPORT SERVICES AGREEMENT. THE U.S. CARRIER WAS GIVEN 45 DAYS, OR UNTIL JANUARY 7, 1975, TO COMPLY WITH THE TERMS OF THE NEW PERMIT. SUBSEQUENTLY, THIS PERIOD WAS EXTENDED TO JANUARY 31, 1975. THE NET EFFECT OF THE RESTRICTIONS AND TERMINATION OF BEYOND AUTHORITY WAS TO REDUCE BRANIFF'S FLIGHTS BETWEEN MIAMI AND LIMA FROM 14 ROUND-TRIP FREQUENCIES PER WEEK TO 7, AND ITS OPERATIONS BEYOND PERU FROM 14 WEEKLY ROUND-TRIP FLIGHTS TO 1 WEEKLY ROUND TRIP.

"FACED WITH THESE RESTRICTIONS ON THE OPERATIONS OF THE U.S. CARRIER TO PERU, ON NOVEMBER 8, 1974 THE CIVIL

AERONAUTICS BOARD ISSUED ORDER 74-11-43 UNDER PART 213 OF ITS REGULATIONS, REQUIRING AEROPERU TO FILE ITS EXISTING AND PROPOSED SCHEDULES SO THAT THE BOARD COULD DETERMINE WHETHER THE OPERATION OF SUCH SERVICES, OR ANY PART THEREOF, WERE CONTRARY TO APPLICABLE LAW OR ADVERSE TO THE PUBLIC INTEREST.

"SUBSEQUENT TO THE ISSUANCE OF THIS ORDER, REPRESENTATIVES OF THE GOVERNMENT OF PERU AND THE GOVERNMENT OF THE UNITED STATES MET FOR CONSULTATIONS IN LIMA NOVEMBER 11-15, 1974, AND JANUARY 8-24, 1975. DURING THE TALKS THE U.S. REPRESENTATIVES MADE CLEAR THE UNITED STATES GOVERNMENT'S VIEW THAT THE RESTRICTIONS THE GOVERNMENT OF PERU HAD UNILATERALLY IMPOSED ON THE U.S. CARRIER CONSTITUTED A VIOLATION OF THE AGREEMENT. THEY URGED THAT THE TWO DELEGATIONS EXPLORE BILATERAL SOLUTIONS TO THE CIVIL AVIATION PROBLEMS BETWEEN THE TWO COUNTRIES. THESE TALKS WERE UNSUCCESSFUL. INTER-CARRIER DISCUSSIONS WERE SIMILARLY UNPRODUCTIVE. BEGINNING FEBRUARY 1, 1975 BRANIFF WAS FORCED TO REDUCE SCHEDULES TO THOSE AUTHORIZED PURSUANT TO THE TERMS OF THE NEW PERMIT.

"IN VIEW OF THE RIGHTS DENIED BY THE GOVERNMENT OF PERU TO THE U.S.-DESIGNATED CARRIER, ON FEBRUARY 24, 1975 THE BOARD ISSUED ORDER 75-2-88 IN DOCKET 27539, IN WHICH IT FOUND THAT THE FOUNDATION FOR THE GRANT OF A PERMIT TO AEROPERU NO LONGER EXISTED, AND DIRECTED INTERESTED PERSONS TO SHOW CAUSE WHY THE BOARD SHOULD NOT CANCEL THE UNCLASSIFIED

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FOREIGN AIR CARRIER PERMIT HELD BY AEROPERU.

"AS THE BOARD HERETOFORE FOUND IN ORDER 75-2-88, THE UNILATERAL ACTION OF THE GOVERNMENT OF PERU, OVER THE OBJECTIONS OF THE UNITED STATES GOVERNMENT, IN RESTRICTING AND TERMINATING RIGHTS OF THE U.S.-DESIGNATED CARRIER BETWEEN THE UNITED STATES AND PERU, AND BEYOND, GRANTED PURSUANT TO THE U.S.-PERUVIAN BILATERAL, HAS SIGNIFICANTLY IMPAIRED, LIMITED AND DENIED OPERATING RIGHTS IN A MANNER INCONSISTENT WITH AND IN VIOLATION OF THE UNITED STATES-PERU AIR TRANSPORT SERVICE AGREEMENT. DESPITE STRONG REPRESENTATIONS BY THE UNITED STATES GOVERNMENT, THE PERUVIAN GOVERNMENT HAS FAILED TO RESTORE THE RIGHTS WITHDRAWN FROM BRANIFF AIRWAYS. UNDER THESE CIRCUMSTANCES, IT IS CLEAR THAT EFFECTIVE AND IMMEDIATE ACTION IS REQUIRED TO INSURE THAT THE RIGHTS OF THE U.S.-DESIGNATED CARRIER TO MAINTAIN A FAIR AND EQUITABLE OPPORTUNITY TO CONDUCT THE OPERATIONS PROVIDED FOR UNDER THE U.S.-PERU AIR TRANSPORT SERVICES AGREEMENT WILL BE RESTORED. WHILE THE QUESTION OF CANCELLATION OF THE AEROPERU PERMIT, BY REASON OF THE EXTINGUISHMENT OF THE FOUNDATION FOR THE GRANT OF THAT PERMIT, WILL BE CONSIDERED IN DOCKET 27539,

PENDING ULTIMATE DETERMINATION IN THAT PROCEEDING, AEROPERU REMAINS ENTITLED UNDER ITS PERMIT TO CONDUCT UNRESTRICTED OPERATIONS TO THE UNITED STATES WHILE BRANIFF'S RIGHTS HAVE BEEN SHARPLY CURTAILED. THE BOARD FINDS THAT TO PERMIT AEROPERU TO MAINTAIN AUTHORITY TO

CONDUCT UNRESTRICTED OPERATIONS UNDER ITS PERMIT, WHILE BRANIFF IS SUBJECT TO THE RESTRICTIONS IMPOSED BY THE GOVERNMENT OF PERU IN VIOLATION OF THE AGREEMENT, WOULD NOT BE CONSISTENT WITH THE PUBLIC INTEREST. PART 213 OF THE BOARD'S REGULATIONS WAS SPECIFICALLY PROMULGATED, INTER ALIA, TO PROVIDE A MEANS BY WHICH THE BOARD COULD TAKE REMEDIAL ACTION IN THE EVENT OF SUCH FOREIGN GOVERNMENT RESTRICTIONS.

"IN ORDER 75-2-88 THE BOARD FOUND THAT THE FOUNDATION FOR A GRANT OF A PERMIT TO AEROPERU HAD BEEN TERMINATED BY PERU'S RESTRICTIVE ACTIONS AGAINST BRANIFF. THE BOARD POINTED OUT THAT THE UNDERLYING FOUNDATION FOR THE GRANT UNCLASSIFIED

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OF A FOREIGN AIR CARRIER PERMIT TO AEROPERU RESTS UPON THE FAITHFUL ADHERENCE TO THE TERMS OF THE UNITED STATES-PERU AIR TRANSPORT SERVICES AGREEMENT, I.E., THE GRANT OF U.S. CARRIERS OF THE RIGHTS EXCHANGED AND PROVIDED FOR IN THAT AGREEMENT, AND THAT THE PERUVIAN GOVERNMENT HAD DENIED THESE RIGHTS WITH RESPECT TO THE OPERATIONS OF THE U.S.-DESIGNATED CARRIER TO PERU. THE PERUVIAN RESTRICTIONS HAVE SERIOUSLY DRAWN INTO QUESTION THE ECONOMIC VIABILITY OF BRANIFF'S ENTIRE OPERATIONS TO PERU. NEVERTHELESS, THE PERUVIAN GOVERNMENT IS PRESENTLY PERMITTING SOME BRANIFF OPERATIONS, AND UNDER THESE CIRCUMSTANCES, PENDING ULTIMATE DECISION IN DOCKET 27539, WE WILL, ALTHOUGH THE JUSTIFICATION FOR SUCH OPERATIONS DOES NOT APPEAR TO EXIST UNDER THE CURRENT CIRCUMSTANCES, PERMIT AEROPERU TO CONTINUE TO OPERATE ONE ROUND-TRIP FLIGHT PER WEEK SOLELY BETWEEN LIMA AND MIAMI, WITHOUT INTERMEDIATE STOPS, OR EXTRA SECTIONS. THE BOARD THEREFORE FINDS, PURSUANT TO SECTION 213.3(D) OF ITS REGULATIONS, THAT THE OPERATION BY AEROPERU OF ANY EXISTING OR PROPOSED SCHEDULES IN EXCESS OF THE ONE WEEKLY ROUND-TRIP SCHEDULE BETWEEN LIMA AND MIAMI, AS SET FORTH BELOW, WOULD ADVERSE TO THE PUBLIC INTEREST; AND, EXCEPT TO THAT EXTENT, THE SCHEDULES OF AEROPERU SHOULD BE DISAPPROVED.

"SHOULD THE TWO GOVERNMENTS REACH AN UNDERSTANDING SUBSEQUENT TO THIS ORDER, RECONSIDERATION OF THIS ACTION WOULD, OF COURSE, BE APPROPRIATE.

"ACCORDINGLY, IT IS ORDERED THAT:

"1. THE SCHEDULES FILED BY AEROPERU ON NOVEMBER 15, 1974,

WITH THE EXCEPTION OF FLIGHT 602 WHICH DEPARTS LIMA  
ON TUESDAYS AND ARRIVES IN MIAMI ON WEDNESDAYS AND FLIGHT  
603 WHICH DEPARTS MIAMI ON THURSDAYS AND ARRIVES IN  
LIMA ON THE SAME DAY, BE, AND THEY HEREBY ARE,

DISAPPROVED, AND EFFECTIVE 30 DAYS FROM THE DATE OF  
SERVICE OF THIS ORDER, AEROPERU SHALL CEASE OPERATING  
SUCH SCHEDULES. FLIGHTS 602 AND 603 MUST ORIGINATE OR  
TERMINATE IN LIMA OR MIAMI AND MUST BE OPERATED WITHOUT  
INTERMEDIATE STOPS. EXTRA SECTIONS FOR SUCH FLIGHTS  
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SHALL NOT BE OPERATED;

"2. THIS ORDER SHALL BE SUBMITTED TO THE PRESIDENT AND  
SHALL BECOME EFFECTIVE ON MAY 27, 1976.

"3. THIS ORDER SHALL REMAIN IN EFFECT UNTIL FURTHER  
ORDER OF THE BOARD; AND

"4. THIS ORDER SHALL BE SERVED ON AEROPERU (EMPRESA DE  
TRANSPORTES AERO DEL PERU) AND THE AMBASSADOR OF PERU IN  
WASHINGTON, D.C.

"THIS ORDER SHALL BE PUBLISHED IN THE FEDERAL REGISTER.

"BY THE CIVIL AERONAUTICS BOARD."  
INGERSOLL

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<< END OF DOCUMENT >>

## Message Attributes

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